

IN THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

FILED
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RICHARD B. ROBERTS, CLERK

STATE OF TENNESSEE, *ex rel.*
ROBERT E. COOPER, JR., ATTORNEY
GENERAL and REPORTER,

Plaintiff,

v.

Case No. 11C2088

MARTHA SALAZAR,
individually and doing business as
COMUNIDAD HISPANA,
a sole proprietorship owned and operated
by MARTHA SALAZAR,

Defendant.

STATE OF TENNESSEE'S MOTION FOR CIVIL PENALTIES FOR VIOLATION
OF TERMS OF FINAL ORDER

1. Plaintiff, the State of Tennessee, through its Attorney General and Reporter, Robert E. Cooper, Jr., on behalf of and at the request of the Division of Consumer Affairs of the Department of Commerce and Insurance ("State"), moves this Honorable Court to assess civil penalties against Defendant for her knowing and willful violation of the terms of the Agreed Final Judgment ("Judgment") and Agreed Order (collectively referred to as "Final Order"), pursuant to Tenn. Code Ann. § 47-18-107(f).

I. FACTUAL ALLEGATIONS

2. On June 1, 2011, Plaintiff State of Tennessee filed a civil law enforcement action alleging that Defendant was engaged in the unauthorized practice of law and violations of the Tennessee Consumer Protection Act.

3. Defendant is not licensed to practice law in Tennessee or in another jurisdiction.
4. No attorneys are employed by or otherwise are associated with Defendant.
5. On October 15, 2012, this Honorable Court entered an Agreed Final Judgment and Agreed Order (“Judgment”) in which Defendant agreed to a permanent injunction prohibiting her from engaging in the unauthorized practice of law, ordering payment of remedial civil penalties in the amount of \$6,000.00, attorney’s fees and costs in the amount of \$4,000.00, and full restitution to consumers who filed a complaint with Defendant, the Attorney General’s Office, or any other agency handling consumer complaints within 180 days of the Court entering the Judgment.
8. In the Judgment, Defendant agreed to pay all consumer restitution claims within two weeks of receiving notice of the complaints. See paragraph 24 of Agreed Final Judgment.
9. On April 25, 2013, the State filed a Final Notice of Consumers and Restitution Owed under the Final Order (“Restitution Notice”), as the requisite 180 days for consumers to file complaints for restitution had closed. In total, five consumers requested restitution, which totaled \$13,818.33, including statutory interest as of that time.
10. Defendant did not pay the consumers by May 13, 2013, which was the two week time frame required by the Judgment.
11. Over one month later, on June 6, 2013, Defendant filed an untimely Response claiming all but one of the five consumer complaints for restitution were “fraudulent”. Defendant conceded one of the consumers’ claims for restitution was not fraudulent, although Defendant has yet to pay that consumer the restitution that Defendant is under a court order to pay within two weeks of receiving the notice.
12. To date, Defendant has not paid any portion of the Court ordered consumer restitution, as required by the Judgment.

13. The State has incurred additional attorneys' fees and costs to respond to Defendant's Response.

II. LEGAL ARGUMENT

14. Paragraphs 21-28 of the Judgment explain in great detail Defendant's obligation to pay restitution to consumers coming forward within six months of the Judgment. Defendant was represented by counsel when she agreed to these terms, and had opportunity to negotiate different restitution terms. Defendant did not request any different procedures.
15. Paragraph 21 of the Judgment explicitly requires Defendant to pay restitution to consumers with "Eligible Complaints", which is defined in the Judgment as a "request or demand from any consumer that was received directly or indirectly by the Defendant and/or the Attorney General and/or any other agency located in Tennessee handling consumer complaints and/or the Federal Trade Commission, and/or any consumer complaint-handling agency or Better Business Bureau within 180 days from the date of entry of this Judgment, and the complaint remains either fully or partially unresolved..."
16. The above definition is clear that consumers need to make a request or demand for restitution, which is precisely what each of the five consumers who requested restitution did. All five of the consumers who requested restitution informed the Attorney General's Office within six months, as required by the Judgment. The Judgment does not require that consumers to file affidavits or produce proof of the amounts they paid Defendant for legal services she was not licensed to provide.
17. Defendant has refused to pay restitution as required by the Judgment, claiming that all but one consumer lied about the amounts paid to Defendant.

18. Defendant has not paid the one consumer whose claim for restitution Defendant did not assert was fraudulent.
19. Defendant has violated the clear terms of the Judgment by refusing to pay restitution to consumers with Eligible Complaints.
20. Tenn. Code Ann. § 47-18-107(f) provides that “Any knowing violation of the terms of an agreement of voluntary compliance, unless it has been rescinded by agreement of the parties or voided by a court for good cause, shall be punishable by a civil penalty of not more than one thousand dollars (\$1,000), recoverable by the state for each violation, in addition to any other appropriate sanction.
21. Defendant has violated the Judgment five times by refusing to pay the consumers within two weeks, as required by the Judgment.

III. PRAYER FOR RELIEF


The State of Tennessee prays as follows:

22. The State prays that Defendant shall pay a civil penalty in the amount of One Thousand Dollars and 00/100 (\$1,000.00) for each violation of the Final Order, for a total of Five Thousand Dollars and 00/100 (\$5,000.00) for her failure to pay restitution to five consumers as required by the Final Order, pursuant to Tenn. Code Ann. § 47-18-107(f);
23. The State prays that the Court order Defendant to pay reasonable attorneys’ fees to the State for the time spent preparing and arguing this Motion, The State will submit an affidavit regarding these fees and expenses; and
24. The State prays that the Court order the Defendant to pay all court costs associated with this Motion and related hearing and no costs shall be taxed to the State as provided in Tenn. Code Ann. § 47-18-116.

**THIS MOTION SHALL BE HEARD ON THE 12th DAY OF JULY, 2013 at 9:00 A.M.
FAILURE TO FILE AND SERVE A TIMELY WRITTEN RESPONSE SHALL RESULT
IN THE MOTION BEING GRANTED WITHOUT FURTHER HEARING.**

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 10934



CAITLIN DOTY
Assistant Attorney General
B.P.R. No. 26273
Office of the Tennessee Attorney General
Consumer Advocate and Protection Division
425 5th Avenue North
Nashville, Tennessee 37243
(615) 741-7663
(615) 532-2910 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent via facsimile and via U.S Mail and Facsimile on this the 27th day of June, 2013 to:

R. FRANCENE KAVIN
Counsel for Defendant
155 Franklin Rd., Suite 120
Brentwood, TN 37027
Facsimile: (615) 371-1747



CAITLIN DOTY